



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210623-0136]

RIN 0648-BK34

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule modifies catch limits in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for gray triggerfish. The purpose of this final rule and the framework action is to modify the catch limits, as applicable, consistent with the most recent interim analysis for gray triggerfish and to achieve optimum yield (OY) for the stock.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Electronic copies of the framework action, which

includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action-modification-gray-triggerfish-catch-limits>.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes gray triggerfish, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 21, 2021, NMFS published a proposed rule for the framework action and requested public comment (86 FR 20649). The proposed rule and the framework action outline the rationale for the actions contained in this final rule, which is unchanged from the proposed rule. A summary of the management measures described in the framework action and implemented by this final rule is described below. All weights in the final rule are described in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally

managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Gray triggerfish in the Gulf EEZ are managed using both commercial and recreational sector measures with each sector having its own annual catch limit (ACL) and annual catch target (ACT). The sector allocation of the stock ACL, which equals the acceptable biological catch (ABC), is 21 percent commercial and 79 percent recreational and was implemented in 2008 through Amendment 30A to the FMP (73 FR 38139; July 3, 2008). Inseason accountability measures (AMs) for gray triggerfish specify that if commercial or recreational landings meet or are projected to meet the respective sector's ACT, that sector will close for the remainder of the fishing year. For the commercial sector, the post-season AM specifies that if the commercial ACL is exceeded despite the quota closure, then the following fishing year's commercial ACL and ACT (commercial quota) will be reduced by the amount of the prior year's commercial ACL overage. For the recreational sector, if the recreational ACL is exceeded and gray triggerfish are overfished, then in the following fishing year the recreational ACL and ACT would be reduced by the amount of the ACL overage in the prior fishing year. The current gray

triggerfish ACLs, ACTs (set at 5 percent and 10 percent less than the commercial and recreational sector ACLs, respectively), and inseason AMs for both sectors and the post season AM for the recreational sector, were established in 2013, through Amendment 37 to the FMP (78 FR 27084; May 9, 2013). The postseason AM for the commercial sector was established in 2008, through Amendment 30A to the FMP (73 FR 38139).

The most recent Southeast Data, Assessment, and Review (SEDAR) stock assessment for gray triggerfish was completed and reviewed by the Council's Scientific and Statistical Committee (SSC) in October 2015 (SEDAR 43). SEDAR 43 indicated that the gray triggerfish stock was not experiencing overfishing but remained overfished and would not be rebuilt by the end of 2017 as previously projected. As a result of SEDAR 43, the Council's SSC made recommendations for an increased overfishing limit (OFL) based on a fixed maximum fishing mortality threshold, which is independent of rebuilding, and ABCs based on an 8, 9, or 10-year rebuilding timeline. Because of the stock not rebuilding as anticipated, the Council decided not to change the ABC, sector ACLs, and sector ACTs set by Amendment 37 but to change the rebuilding timeline to rebuild the stock by 2025. Amendment 46 implicitly adopted the SSC's recommendations for an increased OFL by including alternatives with an ABC that was higher than the *status*

quo OFL. Amendment 44 to the FMP, implemented in 2017 (82 FR 61488; December 28, 2017), updated the stock status to not overfished but did not revise the sector ACLs or ACTs.

Between 2012 and 2019, the commercial sector has exceeded its ACL of 64,100 lb (29,075 kg), two times, in both 2012 and 2018. During that same timeframe, the recreational sector has exceeded its ACL of 241,200 lb (109,406 kg), five times, in 2012, 2013, 2016, 2018, and 2019.

At its September 2020 meeting, the Council's SSC accepted a 2020 gray triggerfish interim analysis conducted by the NMFS Southeast Fisheries Science Center (SEFSC). Unlike full SEDAR stock assessments, interim analyses are designed to occur between regular SEDAR assessments to determine trends in stock condition and project future catch advice. While interim analyses take less time to complete, they cannot be used to determine if a stock is making progress towards rebuilding. Based on the interim analysis, abundance trends of the Gulf gray triggerfish stock suggest an increase in biomass that could support a greater harvest. The Council's SSC determined the interim analysis was suitable for providing ABC catch advice through 2023. From the interim analysis, the Council's SSC recommended the gray triggerfish stock ABC be increased to 456,900 lb (207,246 kg), for 2021 and subsequent fishing years, with the request that another interim analysis be

completed in 2023. The Council's SSC previously recommended an increased OFL (1,220,000 lb (553,383 kg)) that was implicitly adopted by Amendment 46 and was not examined by this interim analysis.

In January 2021, the Council took final action on this framework action, consistent with the most recent interim analysis for gray triggerfish, and recommendations from the Council's SSC, the SEFSC, and the Council's Reef Fish Advisory Panel (Reef Fish AP) to increase the commercial and recreational catch limits for Gulf gray triggerfish, in order to achieve OY consistent with the requirements of the Magnuson-Stevens Act.

Management Measures Contained in this Final Rule

This final rule revises the commercial and recreational ACLs and ACTs consistent with the interim analysis and the Council's SSC, SEFSC, and the Council's Reef Fish AP recommendations.

Commercial ACL and ACT

This final rule increases the Gulf gray triggerfish commercial ACL from 64,100 lb (29,075 kg), to 95,949 lb (43,522 kg), for the 2021, and subsequent fishing years based on the current ACL sector allocation of 21 percent commercial. To determine the ACT, the Council used its ACL/ACT control rule to determine the buffer to be applied to the commercial ACL to account for updated information. Application of the control rule indicated that an 8 percent

buffer is appropriate between the commercial ACL and ACT. This is an increase from the current buffer of 5 percent. Using a more recent time series, the control rule yielded a larger buffer as a result of the number of times sector landings exceeded the commercial ACL, current stock status (the stock is rebuilding), and the precision of landings data. The 8 percent buffer applied to the commercial ACL, revises the commercial ACT (commercial quota) from 60,900 lb (27,624 kg) to 88,273 lb (40,040 kg), for the 2021, and subsequent fishing years. The increased buffer between the commercial ACL and ACT is expected to reduce the risk of the commercial sector exceeding its ACL and to reduce the likelihood of overfishing the gray triggerfish stock. NMFS notes that the commercial sector has never exceeded the commercial ACL that is being implemented by this rule.

Recreational ACL and ACT

This final rule increases the Gulf gray triggerfish recreational ACL from 241,200 lb (109,406 kg) to 360,951 lb (163,725 kg), for the 2021 and subsequent fishing years based on the ACL recreational sector allocation of 79 percent. To determine the new recreational ACT, the ACL/ACT control rule was applied to determine the buffer between the ACL and ACT using updated information. The control rule yielded a 24 percent buffer, an increase from the current 10 percent buffer. The buffer increased because of past ACL overages, current stock status (the stock is rebuilding),

the application of a more recent time series, and the precision of landings data. When the 24 percent buffer is applied to the new recreational ACL, the ACT is increased from 217,100 lb (98,475 kg) to 274,323 lb (124,431 kg), for the 2021 and subsequent fishing years.

NMFS notes that recreational landings in the 2013, 2016, and 2018 fishing years have exceeded the recreational ACL implemented in this rule. The increased buffers between the recreational ACL and ACT are expected to reduce the risk of the recreational sector exceeding its ACL, and to reduce the likelihood of overfishing the gray triggerfish stock.

Measure in the Framework Action but not Codified in this Final Rule

In addition to the other measures contained in this final rule, the framework action also revises the Gulf gray triggerfish stock ABC. As a result of the gray triggerfish interim analysis, and the recommendation of the Council's SSC, the framework action increases the Gulf gray triggerfish stock ABC from 305,300 lb (138,482 kg), to 456,900 lb (207,246 kg). The stock ACL remains equal to the stock ABC. A buffer between the stock ABC and ACL was not recommended by the Council's Reef Fish AP so as to retain the Council's current management approach for gray triggerfish, which is to set the stock ACL equal to the ABC. In addition, the increased ABC is 37.5 percent of the

OFL (1,220,000 lb (553,383 kg)). This large difference between the ABC and OFL reduces the risk of overfishing of the gray triggerfish stock.

Comments and Responses

NMFS received a total of 13 comments on the proposed rule for the framework action. Most comments supported the measures for Gulf gray triggerfish in the proposed rule and framework action. Some comments suggested changes to gray triggerfish management measures that were outside the scope of the proposed rule and framework action, such as increasing the recreational season length, increasing the recreational bag limit, increasing the commercial trip limit, reducing the minimum size limits, or gleaning bycatch within the gray triggerfish portion of the reef fish fishery; therefore, these comments are not addressed further in this final rule. Specific comments related to the proposed rule and the framework action are grouped by topic and addressed below.

Comment 1: The commercial and recreational catch limits for gray triggerfish in the Gulf should remain the same and not be increased.

Response: NMFS disagrees. Maintaining the current ACLs and ACTs is not consistent with the requirements of the Magnuson-Stevens Act to establish catch limits that achieve OY. The previous commercial ACL of 64,100 lb (29,075 kg), the recreational ACL of 241,200 lb (109,406 kg), the

commercial ACT of 60,900 lb (27,624 kg), and the recreational ACT of 217,100 lb (98,475 kg) have been in effect since 2013 (78 FR 27084; May 9, 2013). In 2015, the results of SEDAR 43 found that the Gulf gray triggerfish stock OFL and ABC could be increased. The Council's SSC subsequently recommended these same increases. However, the Council at that time decided not to change the stock ABC, sector ACLs, or sector ACTs. In 2020, the Council's SSC accepted a 2020 gray triggerfish interim analysis, which determined that abundance trends of the Gulf gray triggerfish stock suggested an increase in biomass that could support additional harvest and was suitable for providing ABC catch advice through 2023. The Council accepted the SSC's recommendation for an increase to the ABC and subsequently approved revised sector ACLs based on the current allocation, in order to achieve OY consistent with the requirements of the Magnuson-Stevens Act. The Council's ACL/ACT control rule was used to set new increased buffers between each sector's ACL and ACT to reduce the likelihood of overfishing. Therefore, maintaining the previous catch limits would not serve the purpose of this rule, which is to achieve OY while reducing the likelihood of overfishing. The Gulf gray triggerfish stock is not currently overfished or undergoing overfishing as determined by SEDAR 43, the implementation of Amendment

44 to the FMP (82 FR 61488; December 28, 2017), and the most recent quarterly report on the status of the stocks.

Comment 2: The gray triggerfish population is still being overfished and any increases to the catch limits increases the risks to the stock and healthy oceans.

Response: NMFS disagrees that the gray triggerfish population is still overfished. In 2020, the most recent Gulf gray triggerfish interim analysis index of abundance trends suggested that the gray triggerfish biomass has increased in recent years. This additional biomass should support additional removals from the stock as related to the increases to the commercial and recreational ACLs and ACTs in this final rule. While the interim analysis was not able to provide a biomass estimate, the gray triggerfish stock is not considered to be overfished or undergoing overfishing. As described in the framework action, the catch limit increases in this final rule are based on the findings of the interim analysis, which is deemed by the Council's SSC as suitable for management advice and the use of the Council's ACL/ACT control rule, and best available science.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and

other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gray triggerfish, Gulf, Reef fish, Quota.

Dated: June 23, 2021.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraph (a)(1)(vi) to read as follows:

§ 622.39 Quotas.

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(a) * * *

(1) * * *

(vi) Gray triggerfish -- 88,273 lb (40,040 kg), round weight.

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3. In § 622.41, revise the last sentence of paragraph

(b) (1) and paragraph (b) (2) (iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(b) * * *

(1) * * * The commercial ACL is 95,949 lb (43,522 kg), round weight.

(2) * * *

(iii) The recreational ACL for gray triggerfish is 360,951 lb (163,725 kg), round weight. The recreational ACT for gray triggerfish is 274,323 lb (124,431 kg), round weight.

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